IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11142 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANIYO ALIAS KANO BHIKHABHAI KAHAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR HH PATEL AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/01/2001

ORAL JUDGEMENT

#. Request has been made by the counsel for the respondent for grant of time to file reply to the Special Civil Application for respondents. This request is declined. This matter is squarely covered by the decision of this court being Special Civil Application No.10611 of 2000 decided on 23.1.2001.

#. The petitioner was detained as a bootlegger under the order of the Commissioner of Police, Vadodara dated 7.9.2000 and he is presently at Junagadh Jail, Junagadh.

#. Challenging the this order manifold contentions are raised by the learned counsel for the petitioner but as this petition deserves to be allowed only on one ground it is not necessary to refer all those contentions, discuss and decide.

#. It is not in dispute that none of the respondents has filed reply to the Special Civil Application.

#. One of the contentions raised is that the copies of statements of witnesses recorded under section 161 of Cr.P.C. and F.S.L. report have not been supplied to the petitioner by the detaining authority. It is further submitted that in the representation filed by the petitioner dated 11.10.2000 against the detention order, this grievance has also been made.

#. Reply to the special civil application has not been filed by any of the respondents and as such the factual averments made by the petitioner in the special civil application stand uncontroverted. It is a clear case where the petitioner has been denied of his right of making effective representation against the detention order as conferred upon him under Article 22(5) of the Constitution of India.

In the result, this petition succeeds and the same is allowed. The order of detention of the petitioner dated 7.9.2000 is quashed and set aside. The petitioner Kaniyo @Kano Bhikhabhai Kahar, the detenu, at present in Junagadh Jail, Junagadh, be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. The respondent State of Gujarat is directed to pay Rs.5,000/= as the costs of this petition to the petitioner.

#. The learned counsel for the respondent strongly opposed awarding of the cost of this litigation to the petitioner by the court. Firstly it is the discretion of the court to award the costs. So, there is a little scope for raising such objection by the learned counsel for the respondent. Otherwise also I consider it to be a fit case to award the costs. The learned counsel for the petitioner made a statement on being put by the court that he has charged Rs.5,000/= as a fees from the petitioner to provide him his professional services in this case and this amount has been paid by the petitioner

to him. It is the question of the personal liberty and the petitioner is free to engage any advocate of his own choice. Nobody can compel the petitioner nor any law which required that he has to engage an advocate which charge lesser fees. The advocate is a professional and if any body approach to him to provide his professional services he can charge his own fees. This is not only money which has been spent by the petitioner but in addition to this he would have spent money for typing charges, court fees and other misc. expenses of filing of the petition but the counsel for the petitioner has not produced any bill of expenses and as such that amount cannot be awarded to the petitioner.

#. The State of Gujarat an impersonal machinery is not at fault in the matter. Its only fault is that it has no control over its officers or it has not taken its officers to the task for their negligence, recklessness, carelessness and unmindful of the duties which they owe to the people. Because of this negligence, recklessness, carelessness and unmindful of the duty of the concerned officer the reply to the Special Civil Application has not been filed. Whatever the amount comes from the exchequer it is a peoples' money. This money has to be paid to the petitioner by the State of Gujarat for not of its own fault but for the negligence, carelessness, reckless and unmindful of duty of its officer concerned in this matter. The State of Gujarat through the Chief Secretary is directed to hold an inquiry in the matter and whosoever is found responsible for not filing the reply in the matter in the inquiry this amount of the cost is to be recovered from him. This inquiry is to be completed within a period of six months from the date of the receipt of the writ of this order. Compliance of the order be reported to this court by the Chief Secretary. Unless it is scrupulously done and the officers who are found negligent, careless and unmindful in discharging of their duties as a result of which the State of Gujarat has to suffer monetary loss and that amount is not recovered from those officers its House may not be corrected.

(S.K.Keshote, J.)

*Pvv